

Judicial Authority Law Workshop Report

Dead Sea Marriott Hotel

21 – 22 /12/ 2011

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Executive Summary

To promote the principle of the rule of law and achieve the vision of His Majesty King Abdullah II bin Al Hussein for an independent judicial authority, outlined in the letter sent by His Majesty to the chief justice, Judge Mohammad Al Mahameed, a workshop was held to develop a draft law for the judicial authority. The workshop was held based on decision no. 2/1/9/1624 issued on 22/11/2011 by H.E. the chief justice to form a judicial committee to put forward a draft judicial authority law that includes amendments that support the independence, transparency and integrity of the judiciary and enhance its stature, in preparation for the endorsement of a unified, qualitatively advanced law that regulates the judicial authority in a manner that is in line with the vision of His Majesty in dealing with the judiciary component towards an independent, fair, effective and efficient judiciary.

Accordingly, the Chief Justice invited each of the following to attend a workshop aimed at developing a draft judicial authority draft law in preparation for its submission to the government to proceed with the constitutional channels: judicial committee members that developed the draft law, Judicial Council members, Cassation Court judges, and directors of the Administrative Units at the Judicial Council. The workshop was also attended by the USAID funded Rule of Law (ROLP) staff.

Following are the main objectives of the workshop:

1. Translate the vision of His Majesty towards the enhancement of the judicial authority through the endorsement of a judicial authority law that incorporates amendments that support the independence, transparency and integrity of the judiciary and the enhancement of its stature.
2. Promote participation among decision makers in the judicial authority, judicial committee members tasked with developing the draft law, Judicial Council members, Cassation Court judges, and the Administrative Units at the Judicial Council to provide their feedback, comments and recommendations on the draft law content and articles.
3. Promote the institutionalization of work at the Judicial Council Administrative Units, through involving the Units in drafting and documenting comments and recommendations put forward by judges on the draft law, such that they are reviewed and incorporated into the final draft of the judicial authority law, and prepare the rationale and reasoning for its enactment prior to its submission to the government for proceeding through the constitutional channels.
4. Enhance channels of communication within the judiciary.

At the opening session, and in his opening remarks, H.E. the Chief Justice, Judge Mohammad Al Mahameed, emphasized that the draft judicial authority law is considered the cornerstone of the entire judiciary, pointing out that the enhancements undertaken by the judiciary “constitute important reform of the

judiciary and usher in a new era, in light of the qualitative shift witnessed by the Kingdom in the legal and judicial reform spheres, through the enactment of new legislations that are compatible with the constitutional amendments that contributed in setting the basis of that state of the rule of law state and that of institutions, and emphasized the separation of powers and the independence of the judiciary”.

Judge Al Mahameed praised the efforts of the committee that comprised a large segment of the judiciary across all levels. He praised the committee that was tasked with developing a draft law, after it has reviewed the comments, recommendations and views submitted by all members of the judiciary, that were listed in the questionnaires that were distributed among all judges. The committee has incorporated the views and suggestions that benefit the judges and judiciary and account for the interest of the state and that of the citizen.

In his speech, the Chief Justice pointed that the draft law “includes valuable principles and basis for achieving full independence of the judicial authority, define the jurisdiction of the different types and levels of regular courts, and how they will exercise their authorities and mandate according to the provisions of the Constitution. He outlined the role of the public prosecution and the state lawyer according to the legislations in force”.

Following the Chief Justice’s speech, Judge Ahmad Jammaliyyeh, the Chief Judge of the Amman First Instance Court, and the judge assigned by the Judicial Council to work with the Rule of Law Project on activating the Administrative Units Regulations No. 5 of 2010, and oversee their supervision, delivered a presentation on the Administrative Units. The presentation covered the functions and performance of the Administrative Units, the mechanism of their work and their role in the judicial development process and in providing administrative and technical support to the Judicial Council, including supervising the preparation and organization of judicial workshops related to judicial enhancement and the preparation of the judicial authority strategy.

Judicial Authority Law Workshop

Workshop Attendees

Appendix (1)

Workshop Title: Develop a Draft Judicial Authority Law

Place / Date: Dead Sea Marriott Hotel, 21 – 22/ 12/ 2011

Attendees: H.E. the Chief Justice, Judicial Council members, Cassation Court judges, directors of the Administrative Units at the Judicial Council, judicial committee members that developed the draft law, and USAID funded Rule of Law (ROLP) team.

Number of workshop participants amounted to 54.

- Chief Justice and members of the Judicial Council (Chief Judge of the Court of Higher Justice, Chief Attorney General, Chief Inspector, the two most senior Cassation Court judges, Secretary General of the Ministry of Justice, chief judges of the courts of appeal, and the Chief Judge of the Amman First Instance Court.)
- Head of the Technical Office at the Court of Cassation
- The State Lawyer
- Director of the Judicial Institute of Jordan
- Chief Prosecutor before the Court of Higher Justice
- Court of Higher Justice judge
- Amman Attorney General
- Amman Court of Appeals judge
- Amman First Instance Court judge
- Judge from the Ministry of Justice
- Cassation Court judges (30 judges)
- Directors of the Administrative Units at the Judicial Council (Judges Affairs Unit, Training and Specialization Unit, and Planning and Development Unit).
- Office Manager of the Chief Justice's office and the secretary of the Judicial Council.
- Rule of Law Project team.

Workshop Agenda

Appendix (2)

Day 1 – Wednesday, 21/ 12/ 2011

- Speech of His Excellency Chief Judge of the Cassation Court, and Chief Justice Judge Mohammad Al Mahameed.
- Speech of His Excellency the Chief Judge of Amman First Instance Court, Judge Ahmad Jammaliyyeh, on the “**Administrative Units Falling Under the Judicial Council.**”
- Presentation of the results of the questionnaire that was distributed among all judges across the Kingdom on the judicial authority law presented by Mr. Nabil Isaifan from the Rule of Law Project.
- Presentation of the draft judicial authority law prepared by the judicial committee and presented by **Judge Dr. Thaer Al Adwan, Amman Court of Appeal.**
- Introductory presentation on “**Judicial Independence and Judicial Council Mandate**” presented by **Judge Khalifeh Al Suleiman, Court of Cassation**, followed by discussion on the legal articles related to the presentation.
- Presentation on “The Jurisdiction of Courts” presented by Judge Dr. Akram Masaadeh / Court of Higher Justice, followed by discussion on the legal articles related to the presentation.
- General discussion session on the draft judicial authority law and development of recommendations.

Day 1 – Thursday, 22/ 12/ 2011

- Presentation on “Appointment of Judges” delivered by Judge Mohammad Al Homsy / Cassation Court, followed by discussion on the legal articles related to the presentation.
- Presentation on “The Duties of Judges” delivered by Judge Dr. Abdul Qader Al Tura / Cassation Court, followed by discussion on the legal articles related to the presentation.
- Continue general discussion session on the draft judicial authority law and development of recommendations.

Introduction

In response to the invitation of the Chief Justice the Judicial Council to hold a workshop to prepare a draft law for the judicial authority, the USAID funded Rule of Law Project, in coordination with the Administrative Units of the Judicial Council of Jordan, held a workshop to prepare a draft law for the judicial authority. The workshop was held between 21 – 22/ 12/ 2011 at the Dead Sea Marriott Hotel and was attended by decision makers within the judiciary represented by the Chief Justice and members of the Judicial Council, Cassation Court judges and members of the committee charged with preparing the draft law.

The workshop had several objectives, at the forefront of which were the following: to translate the vision of His Majesty towards the enhancement of the judicial authority through the endorsement of a judicial authority law that incorporates amendments that support the independence, transparency and integrity of the judiciary and the enhancement of its stature; promote participation among decision makers in the judicial authority through providing their feedback, comments and recommendations on the draft law content and articles; promote the institutionalization of work at the Judicial Council Administrative Units, through involving the Units in drafting and documenting comments and recommendations put forward by judges on the draft law, such that they are reviewed and incorporated into the final draft of the judicial authority law, and prepare the rationale and reasoning for its enactment prior to its submission to the government for proceeding through the constitutional channels; and finally to enhance channels of communication within the judiciary.

This report covers all the preparatory activities and events leading up to the workshop, and all activities undertaken during the workshop, and the methodology followed to achieve the main objectives of the workshop, which is to prepare a draft of the law that is considered one of the most important laws concerning the judiciary and judges in a way that reflects the vision of His Majesty towards the strengthening of the independence of the judiciary and the separation of powers, and establishing the principles of the rule of law, justice and equality.

Appendix (3) – Speech of the Chief Justice, Judge Mohammad Al Mahameed

H.E. the Chief Justice, Judge Mohammad Al Mahameed emphasized, in his opening remarks, that the draft judicial authority law is considered the cornerstone of the entire judiciary, pointing out that the enhancements undertaken by the judiciary “constitute important reform of the judiciary and usher in a new era, in light of the qualitative shift witnessed by the Kingdom in the legal and judicial reform spheres, through the enactment of new legislations that are compatible with the constitutional amendments that contributed in setting the basis of that state of the rule of law state and that of institutions, and emphasized the separation of powers and the independence of the judiciary.

Judge Al Mahameed praised the efforts of the committee that was charged with preparing the draft law, stating that “the assigned commendable judicial committee, which comprised a large segment of the judiciary across all levels, developed a draft for this law in a short time after reviewing the comments, recommendations and views submitted by all members of the judiciary, that were listed in the questionnaires that were distributed among all judges. The committee has incorporated the views and suggestions that benefit the judges and judiciary and account for the interest of the state and that of the citizen.”

Judge Al Mahamid touched on the content of the draft law, whereby he pointed out that the draft law “includes valuable principles and basis for achieving full independence of the judicial authority, defining the jurisdiction of the different types and levels of regular courts, and how they will exercise their authorities and mandate according to the provisions of the Constitution. He outlined the role of the public prosecution and the state lawyer according to the legislations in force”.

Finally, Judge Al Mahamid praised the efforts made by those working in the judiciary, both judges and staff, and especially the judges of the Court of Cassation, whose efforts contributed to raising performance to unprecedented levels, according to the number of judicial activities over the past few months, hoping continued efforts in the future.

Appendix (4) – Speech of the Chief Judge of the Amman First Instance Court, Judge Ahmad Jammaliyyeh

H.E. chief judge of the Amman First Instance Court, judge Ahmad Jamaliyyeh, who is charged with activating the Administrative Units Regulations, started his speech by welcoming participants, pointing out that he was assigned by the chief justice to hold this workshop, which includes the largest gathering of decision makers in the judiciary to draft a judicial authority law.

He extended his appreciation to His Excellency the Chief Justice, the esteemed members of the judicial council, cassation court judges, Judicial Council Administrative Units team, and members of the USAID funded Rule of Law Project.

His Excellency stressed the importance of the judicial authority the importance of working on bringing about qualitative change in the performance of the judiciary such that it is able to achieve its core and fixed values of justice, fairness, equality and the safeguarding of the rights of citizens that are guaranteed by the Jordanian Constitution.

He also stressed on the importance of converging all efforts in order to improve the performance of judges, the quality of judgments and litigation procedures, as well as raising the competence the judges, in terms of both knowledge and practice. This is important in light of the increasing number of cases and the growing diversity of the types of disputed legal issues brought before courts today. He emphasized that the Judicial Council sets policies and strategies aimed at speeding up litigation proceedings and judgments enforcement, and continues to pursue projects that strengthen the independence of the judiciary in accordance with best international practices.

His Excellency also touched on the importance of the Administrative Units that have been activated in accordance with the Administrative Units Regulations No. 5 of 2010 and the contribution they make in alleviating burden on the Judicial Council. Furthermore, he provided a summary overview of the achievements made during a record time, in cooperation with the Rule of Law Project, and the workshops that were held in order to strengthen communication channels and ensure the highest standards of transparency and information sharing and exchange of experiences. In addition, he presented an outline of the projects currently underway, most important of which is the Judicial Council's new website as it constitutes a comprehensive electronic gateway that enhances internal and external communication channels as it allows access to information readily and easily.

In relation to improving performance and level of service, judge Jamaliyyeh explained that the Administrative Units distributed a questionnaire to all judges in the Kingdom. The questionnaire is related to the judicial authority law aimed at measuring public opinion and views on all that would enhance performance and

promote development of judicial work. Questionnaire results will be studied, reviewed and analyzed seriously to benefit from their outputs.

In conclusion, he hoped that the workshop will help achieve this vision of His Majesty and the directions of His Excellency the Chief Justice towards improving the performance of the judicial authority in a way that supports advancing reform forward.

Presentation on the results of the questionnaire distributed among judges – Mr. Nabil Isaifan

The Rule of Law Project representative, Mr. Nabil Isaifan, pointed out that earlier and prior to the formation of the judicial committee charged with developing a draft judicial authority law, a questionnaire was distributed among all judges across the Kingdom to solicit their views and suggestions related to the judicial authority law (appendix 4) such that it would be drafted in a way that serves the interests of judiciary and accounts for the higher interest of the country and citizens. The committee has reviewed the comments, suggestions and views provided by all judges holding various posts and incorporated the ones that benefit the judges and judiciary and account for the interest of the state and that of the citizen.

Mr. Isaifan indicated that the aim of the questionnaire is to develop a unified law that governs the judicial authority and that is substantially advanced and consistent with the aspirations of His Majesty in terms of dealing with the judiciary and achieving an independent, efficient and effective judicial authority.

Mr. Isaifan presented the results of the questionnaire (appendix 5), indicating that at least 99% of judges have expressed their need for a uniform law governing the judiciary. With regard to the provisions proposed by judges for inclusion in the judicial authority law, Mr. Isaifan indicated that according to the questionnaire results, provision related to financial and administrative independence registered the highest percent, followed by provision related to the retirement of judges. They called for setting specific criteria in the event that the Judicial Council decided to dispense with the services of a judge.

Mr. Isaifan also pointed to the confirmation of judges on issues related to improving their living standards, providing them with immunity, and re-examining the basis for promotion. They also called for establishing a judges club according to the questionnaire results.

As for the provisions in the Judicial Independence Law and the Regular Courts Formation Law that were proposed by judges to be amended, Mr. Isaifan stated the affirmation of judges to amend article 16 of the Judicial Independence Law pertaining to the retirement of judges, in addition to article 20 of the same law which requires the judge to pass an interview prior to promotion. In addition, hey

called for amending the age requirement for hiring judges to become 30 among other provisions.

Finally, with regard to legislation that must be adjusted, from the viewpoint of the judges, in the light of the constitutional text referring to the independence of the judicial authority, Mr. Isaifan outlined the laws that need to be amended, which are the following: Judicial Independence Law, Regular Courts Formation Law, Criminal Procedures Code, Conciliation Courts Law, Civil Procedures Code, Penal Code, Anti-Corruption Commission Law, Judicial Institute of Jordan Regulations, special courts laws among others.

It must be noted that the judicial committee that was tasked by the Judicial Council to prepare the draft law reviewed the comments, suggestions and views provided by all the members of the judiciary, through the questionnaire that was distributed among all judges.

Presentation of the Draft Judicial Authority Law - presented by Judge Dr. Thaer Al Adwan

Dr. Thaer Al Adwan, court of appeals judge, and one of the judicial committee members formed to develop a draft law, presented the draft judicial authority law, highlighting the articles that were added, the articles that were amended, and the articles that were kept unchanged, explaining that said amendments came to conform with the recent constitutional amendments.

Presentation on “Judicial Independence and Judicial Council Mandate” - presented by Judge Khalifeh Al Suleiman

Appendix (6)

Court of Cassation Judge, judge Khalifa Sulaiman, one of the judicial committee members formed to develop the draft law, started his presentation by outlining the requirements of judicial independence and he stressed on the institutional independence of the judiciary and individual independence of judges, as well as financial and administrative independence, and independence in decision-making with regard to cases falling under the judge's jurisdiction.

Judge Suleiman covered judicial independence in international conventions and modern constitutions in each of the Statute of the International Court of Justice, the

Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, as well as the Basic Principles on the Independence of the Judiciary that were adopted at the Seventh United Nations Congress on Crime Prevention and Treatment of Offenders for the year 1985.

Judge Suleiman presented the legal articles related to this pillar and the basis that the committee used in drafting them. The presentation was followed by discussion among judges of several articles. Several issues were raised within this pillar that aim at enhancing judicial independence. Several ideas were suggested that most important of which focus on the principle of financial and administrative independence of the judiciary, and the role of the Judicial Council in the preparation of legislations related to the judiciary.

In addition, several proposals were put forward that include the possibility of preparing a budget for the judicial authority independently and submit it to parliament directly, and not to the executive power., the addition of elected members to be on the judicial council who would be elected directly by judges from among first instance and appeals courts.

Presentation on “The Jurisdiction of Courts” - presented by Judge Dr. Akram Masaadeh

Appendix (7)

A member of the Court of Higher Justice, Dr. Akram Masaadeh delivered a presentation on "the Jurisdiction of Courts," and presented the relevant legal provisions within the law, as well as the original text and amendments introduced by the committee. The presentation was followed by detailed discussion and dialogue of several articles of the law and many recommendations were presented for their amendment in a way that would serve the goal of promoting judicial independence and enhancing justice.

Presentation on "the appointment of judges" - Judge Mohammed al Homsy

Appendix (8)

During the second day of the workshop, the judges discussed the appointment of judges pillar through presenting the legal articles related to this issue. Cassation Court judge, Mohammad Al Homsy, a members of the judicial committee that was formed to prepare the draft law, and during his presentation touched on the recent

constitutional amendments related to the judiciary and which have given the judiciary greater importance and stature. He also referred to the letter of His Majesty that was sent to the Chief Justice in which he emphasized commitment to the separation of powers principle and the importance of augmenting the competence and capacity of courts, empowerment of its judges and staff to efficiently run courts through continuous training, education and development.

Judge Al Homsy also outlined the terms and conditions for appointing judges and referred to the legal text and articles governing the appointment process, as well as their interpretation and method of application on the ground. He also touched on the method of appointing Cassation Court judges and the Chief Justice.

Presentation on “The Duties of Judges” delivered by Judge Dr. Abdul Qader Al Tura

Appendix (9)

Discussion of the duties of judges was conducted through presenting the relevant legal articles that address said issue. The presentation was conducted by Cassation Court judge Dr. Abdul Qader Al Tura, who is a member of the judicial committee charged with developing the draft law. Judge Al Tura presented a working paper containing two researches. The first research relates to the scope of the functions and duties of judges, which he summarizes in three tasks: to perform, to comply with laws and to exhibit loyalty to his / her career. The second research covered the duties of judges outside the scope of his / her work whereby he classified them into three groups according to the nature of each: the observance of ethics, general morals and professionalism, the professional nature, and the political nature that may affect the State's policy and principles.

Workshop participants reviewed the relevant articles of the law and the principles on which the judicial committee that was formed by the Judicial Council to develop the draft law used as a basis for its work. The presentation was followed by discussions among participating judges on many articles of the law and the proposition of recommendation, ideas and suggestions on this issue.

The workshop concluded with the discussion of other legal articles that were not covered by the four presentations.

The Judicial Council Administrative Units documented all comments and recommendations put forward by judges on the draft law, such that they are reviewed and incorporated into the final draft of the judicial authority law, and prepare the rationale and reasoning for its enactment prior to its submission to the government for proceeding through the constitutional channels.

The Chief Judge of the Amman First Instance Court, Judge Ahmed Jamaliyeh presented to Chief Justice Mohammad Al Mahamid, an initial draft of the Judicial Authority Strategy “The Strategy of Building” for the years 2012 -2014. The Chief Justice and members of the Judicial Council will review it and send a copy to His Majesty to request permission for its launch at the third judicial conference planned to be held in early 2012.

Broad Outline of the Judicial Authority Draft Law

Appendix 10

Through the judges’ discussion of the draft judicial authority law, planned to be submitted to the government after incorporation of the necessary amendments following the workshop, the judges recommended the following:

- Raise the minimum age requirement for judicial appointment from 25 years to be 27 years again as was the case previously.
- The judicial authority must be financially and administratively independent.
- The possibility of preparing an independent budget for the judiciary that is submitted directly to parliament as opposed to the executive power.
- Establish an appeals court in the Zarqa governorate to reduce caseload before the Amman Appeals Court. A present of the court would be assigned as well as a number of judges, according to need. The Court may convene in any location within the geographic jurisdiction and with the approval of the president of the court.
- Determine the specialization of judges and assign them to either the civil or criminal chamber at first instance and appeals courts and the Court of Cassation by a decision signed by the Chief Justice.
- Establish a judicial council with exclusive jurisdiction over the matters relating to judges covered under the provisions of the judicial authority law and the chief inspector of regular courts.
- Establish an institute that shall be called the Judicial Institute of Jordan. A special regulation that shall be issued for establishing said institute and which would outline the institute’s goals, structure, and mechanism of work. A senior judge, holding a rank of not less than special shall be assigned as the institute’s director upon a decision issued by the Chief Justice that is based on the nomination of the Judicial Council.
- The Judicial Council to form a committee that would look into decisions or matters relating to the retiring of judges.
- Place higher emphasis on the role of the Judicial Council in drafting legislations related to the judiciary.
- Add elected members to join the membership of the Judicial Council such that they are elected directly by judges from first instance and appeals courts levels.